JUDICIAL COUNCIL OF CALIFORNIA • ADMINISTRATIVE OFFICE OF THE COURTS

Center for Families, Children & the Courts

Update

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The Educational Crisis of Children in the Juvenile Court System

Kathleen A. Kelly

This article is a summary of a more in-depth law review article that will appear in the Hastings Constitutional Law Quarterly.

In all the debate about the burgeoning number of youth incarcerated in our juvenile justice system or living in foster care because of abuse and neglect, few have recognized the growth of an immense insidious crisis: the overwhelming numbers of children—court dependents and delinquents alike—who suffer from educational deficiencies and disabilities.

The fact is that most of these children do not receive the special education and other educational services they need. This problem is particularly acute for children and youth in out-of-home placement. Without intervention, most of these young people will graduate, not from high school, but to the public assistance and criminal justice systems. Given that the annual per-capita cost of incarcerating a ward in the California Youth Authority is now $37,000, the price of ignoring these young peoples' educational needs is both morally and fiscally untenable.

How can we reverse this trend? First, we must acknowledge the urgency of the problem in the lives of these children.

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ABUSED AND NEGLECTED CHILDREN GET LAWYERS

Jennifer Walter

The Judicial Council and its Center for Families, Children & the Courts (CFCC) hailed a key victory for children in California on September 13, 2000, when the Governor signed Judicial Council–sponsored Senate Bill 2160 (Stats, 2000, ch. 450), landmark legislation giving every abused and neglected child a voice in court. The new law mandates that every child in an abuse and neglect proceeding have attorney representation unless the court believes it would not benefit the child. In addition, the law prohibits the attorney for the petitioner (the agency alleging grounds for abuse and neglect findings) from also representing the child.

This victory was the culmination of the work of many experts in the field, including staff at the Judicial Council's Office of Governmental Affairs (OGA) and the CFCC. During the past year, the CFCC devoted many of its resources to focus policy efforts on the quality of child representation in California. In October 1999, the *Journal of the Center for Children and the Courts,* edited by Audrey Evje, devoted its first issue to the subject. An article by Jennifer Walter, supervising attorney at the CFCC,

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Special Education Law

Judge Candace Beason
Superior Court of California, County of Los Angeles

No longer is special education an issue that only occasionally arises in an education or civil rights case. More and more cases relating to a multitude of special education issues are being filed each year. Now judges in all types of assignments will be evaluating special education issues based on newly revised federal and state laws. Some examples are:

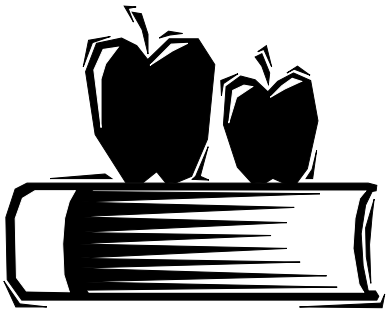
■ A family law judge deciding an acrimonious custody and visitation matter will need to be aware of special education issues. In making a decision, the judge will need to consider questions such as which parent is more knowledgeable or capable or likely to participate with school personnel in devising an IEP (Individual Educational Plan) for the child. What special needs does the child have? Will joint custody help or hurt the child in school? Will the parents be able to make decisions as part of the team?

■ When reviewing or approving a minor's compromise in a personal injury case, does the judge have sufficient information to adequately assess the case when the child has a disability that qualifies him or her for special education?

■ Delinquency and dependency court judges make decisions daily about whether or not a minor should be a ward of the court: Is the minor really a child who should be under the jurisdiction of the court? If so, which placement would best meet the special needs of the child? The judge needs to be aware that the court has the authority to join parties who have responsibility for providing appropriate educational and other services to the minor.

Studies have estimated that between 28 and 46 percent of delinquent children and approximately 20 to 25 percent of dependent children have at least one identifiable disability for special education purposes. Other studies place the rate for delinquent children as high as 60 percent. No matter which figure is the more precise, children involved in the juvenile court process are at least twice as likely as the general population to be in need of special education.

All these scenarios described above are repeated across California on a daily basis. Some judges are knowledgeable about special education issues; most are not. Revisions to federal and state regulations concerning special education now make it imperative that judges educate themselves in this area. To that end, a proposed amendment to section 24 of the California Standards of Judicial Administration is currently being considered. The amendment would guide the court in considering the educational needs of children in the juvenile court process. A key component of the proposed amendment is that judges, attorneys, and other professionals in the courts would receive training in special education and applicable laws.



Until the amendment is approved, judges who encounter special education issues or regularly preside over juvenile matters would be well advised to begin familiarizing themselves with the regulations just promulgated in March 2000. New changes affect the role of the student, parent, teachers, and administrators. The "comments" that are attached to the regulations provide a helpful guide to the statutes, posing over 30 key questions and the U. S. Department of Education's responses.

California's statutory scheme is found at Education Code section 5600 et seq. Legislation to bring state laws into alignment with the Individuals with Disabilities Education Act was vetoed by Governor Davis in 1999 because of concerns that the bill would "likely be found to create significant reimbursable state mandates." Urgency legislation is pending to resolve the discrepancies. The desired changes may take place as early as the end of the year. Both the state and federal laws have specific provisions setting forth the types of disabilities covered, the parties who should participate in formulating the IEP, the procedures that must be followed if there is a disagreement between the parent and the school, and disciplinary procedures when a student is in special education. The law covers children with disabilities from ages 3 to 21. The range of children affected by the legislation requires that anyone working with children have at least a minimal understanding of these laws.

A number of state and federal governmental agencies publish materials on the subject of special education. The 2000 edition of *California Special Education Programs: A Composite of Laws*, from the California Department of Education, contains all of the various code sections related to special education that appear in the Education Code and Welfare and Institutions Code. It also reports on the status of various bills that have recently passed, as does the department's Web site (*www.cde.ca.gov/spbranch/sed/index.htm*). Another valuable resource is the *California Juvenile Court Special Education Manual* by the Youth Law Center in San Francisco. It was written and published in 1994, so it does not incorporate the most recent statutory changes. However, one of the authors, Sue Burrell, recently co-authored an update for the Office of Juvenile Justice and Delinquency

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Prevention titled "Special Education and the Juvenile Justice System" (NCJ No. 179359) that is now available on OJJDP's Web site, *www.ojjdp.ncjrs.org*.

Underlying all special education and related laws is the notion that *all children* are entitled to a free and appropriate public education (FAPE). The parameters of what that entails are frequently left to the courts. Parents of disabled children are filing lawsuits to compel school districts to provide services. Parents of children who are not in special education sue school districts to enforce their children's right to a FAPE, claiming that limited educational resources are disproportionately being spent on special education to the detriment of the majority of students. Children who are wards of the court and convicted inmates up to the age of 21 who have received special education in the past are entitled to continued services while in placement or in custody. The courts, and judges in particular, need to begin the process of understanding the wide spectrum of cases that involve issues of special education law so that our decisions are the best we can make in any given case. ■

Judge Candace Beason is a Los Angeles Superior Court judge currently on a one-year educational sabbatical.

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argued that the state was long overdue in fulfilling its promise to provide a lawyer independent of the petitioning agency to each child in an abuse and neglect case.

The prevailing national policy since 1974 has been that children in abuse and neglect cases should have independent representation. Under the Child Abuse Prevention and Treatment Act (CAPTA), federal law requires, as a condition of receiving federal funds, that states provide independent representation in every case involving an abused or neglected child that results in a judicial proceeding.* Until this year, California was one of only three states that permitted the child to be represented by the same attorney who represents the petitioning agency and thereby risked losing approximately $5 million in CAPTA and Children's Justice Act funds.† Before passage of this law, some courts automatically appointed attorneys for children and watched attorney caseloads climb, while others sought to target appointments for selected children. As of January 1, 2001, the law's effective date, abused children will have the same rights to representation in all counties of the state.

In December 1999, Chris Wu, attorney at the CFCC, worked together with Dawn Kusumoto, staff counsel to the Senate Select Committee on Juvenile Justice, to organize a jointly sponsored public hearing titled "The Right of Abused or Neglected Children to Legal Representation in Dependency Court." The hearing was conducted by Senator Adam B. Schiff; Judge Michael Nash, co-chair of the Judicial Council's Family and Juvenile Law Advisory Committee; and Judge Leonard Edwards, Judicial Council member. Many experts testified, including Marvin Ventrell from the National Association of Counsel for Children; Michael Piraino from the national Court Appointed Special Advocate (CASA) program; Judge Terry Friedman, presiding judge of the Los Angeles Children's Court; Jennifer Walter and other attorneys; CASA representatives; and foster-care children. In addition, OGA staff, most notably Lee Morhar, was instrumental in advocating for the passage of SB 2160.

Currently, local budgets for court appointed counsel are not determined by court size, but rather by funding levels predating the Trial Court Funding Act of 1997. Funding levels were set by individual counties and reflected huge disparities; until now, the AOC has been basically limited to these budget levels and has supported requests for additional funding based on caseload and rate increases. The state Department of Finance has turned down AOC requests for increased funding in this area time and time again because of the lack of statewide standards. Therefore, the law directs the Judicial Council, by July 1, 2001, to promulgate rules of court establishing caseload standards, training requirements, and guidelines for appointed counsel and CASAs in compliance with CAPTA.

The CFCC needs the help of local courts and legal service providers during this next year to develop these standards, trainings, and guidelines. The standards are crucial for two reasons. First, the standards will determine the quality of representation a child can depend on receiving from his or her attorney. Second, the standards will also dictate the level of funding allocated for court appointed counsel.

SB 2160 represents a historic opportunity: it can positively affect the lives of abused and neglected children in California by giving each an independent attorney. The challenge will be to ensure effective representation for all through the adoption of appropriate standards, including caseload standards, and the allocation of resources to adequately fund court appointed counsel. ■

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*42 U.S.C. §§ 5106a(b)(6), 5106c(b)(1) (West Supp. 1992).

† Pennsylvania and Indiana do not receive CAPTA funds.

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Second, we must take advantage of the innovative programs and judicial remedies available to address the situation. Even then, these children need more. Fundamentally, these children need someone who will advocate for their educational rights. This article will describe the nature of this educational crisis and will discuss methods to avert it where children's educational rights can be most effectively enforced—in juvenile court.

DEPENDENTS OF THE COURT: FOSTER CHILDREN

The plight of children in the dependency system is sobering. In addition to dealing with the physical and emotional trauma of parental abuse or neglect, these children must struggle with numerous changes in their placement and their schools. In fact, foster children in California attend an average of 9 to 10 different schools by age 18. It is little wonder that these children demonstrate significantly lower achievement and lower performance in school. At the least, the issues they face at school range from the difficulties of making new friends and adjusting to new teachers to grappling with delays in enrollment and transfer of their records to problems with lost academic credits when they are moved mid-semester. Compounding these problems, they must also navigate through the various education, child welfare, mental health, and probation systems whose responsibility it is to implement the services they may need under an Individualized Education Plan (IEP), Student Study Teams (SST), or their court case plan.

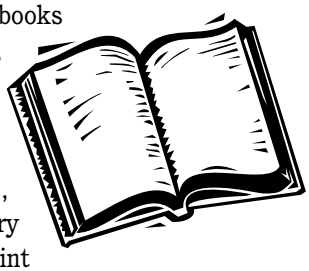
Foster children receive special educational services at higher rates than the general population, yet there are frequently delays in delivery of services. While studies show that many of these youngsters suffer undiagnosed learning disabilities, others reveal that too often foster children are overidentified and labeled as "special ed" or "problem kids." The simple truth is that these children who move from placement to placement and school to school fall behind and suffer academically. The statistics are telling: as many as 75 percent of foster youth perform below grade level; 50 percent have been retained at least one year in school; and more than 50 percent do not graduate from high school.

JUVENILE COURT DELINQUENTS

The statistics for youth in the juvenile delinquency system are no less troubling. As many as 50 percent of incarcerated youth have undetected learning disabilities, and up to 70 percent may qualify for special education programs. Large numbers of learning disabled youth drop out of school and end up in the criminal justice system. Adding to the problem, characteristics common to children with learning disabilities, such as difficulty in listening, thinking, and speaking, often lead to misinterpretation of their behavior, resulting in incarceration. As retired Santa Clara County Judge Read Ambler ironically puts it, "Can't read? Go to jail!"

Whether the issue is truancy, suspensions, or undetected learning disabilities, nearly all the youth in detention facilities have serious learning problems. Most of these young people will not graduate from high school, and, without intervention, they have few prospects for making it in this high-tech information-driven economy.

Yet when given the opportunity, many of these same youth are remarkably responsive. For example, young people detained in San Francisco's Juvenile Hall have shown tremendous enthusiasm for the new library project there. They request books about poetry, mythology, art, history, science, Shakespeare, and even Harry Potter! The point is that many of these youth, whether they are "special ed," "mental health," or drug addicted, want to learn. The professionals working with them need to do more to help them.



LEGAL FRAMEWORK

Statutory and case law provide ample authority that education services are an entitlement for children with disabilities. The Individuals with Disabilities Education Act (IDEA) requires that all eligible students receive a "free appropriate public education." (20 U.S.C. § 1400 et seq., Ed. Code, § 56000, as well as section 504 of the Vocational Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Education Act, which provide protection to children with disabilities). The law is also clear that school districts have an affirmative duty to "actively and systematically identify children with exceptional needs." (Ed. Code, § 56300.)

The educational rights set forth in IDEA basically confer rights to parents that are to be exercised on behalf of a child. Unfortunately, where these children are concerned, services are difficult to obtain. First, the statutory framework enumerating the full range of due process and substantive rights is a challenge to comprehend. For parents whose children are in the juvenile justice system, the task of understanding the laws and dealing with the agencies mandated to execute them is overwhelming. Another problem is that parents, particularly those whose children are in the dependency system, often are not available to advocate for their child's educational needs.

Systemic problems also play a role. As just one example, the strict timelines under IDEA are not in sync with the relatively short statutory mandates governing juvenile court hearings. Thus, the time frame for an IEP, which may be necessary for a minor's placement, is likely to exceed the statutory date for the minor's disposition. When a parent is not available and an educational surrogate

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must be appointed, there are often delays involved in terminating a parent's educational rights and designating an educational surrogate for a child. Even when a surrogate is appointed, that person may not have the time and tenacity it takes to obtain a timely IEP and advocate for the services necessary to meet a child's individual needs.

It is important to recognize that the educational challenges children in the juvenile court system face are not limited to "special education" issues. For example, a youth in a detention facility may be unable to get a GED or the academic credits necessary to maintain grade level. A foster child may not get enrolled in the school closest to a new placement for weeks. She may lack the records or verification of school credits necessary to complete high school or to enroll in college. If a child in a group home is lucky enough to have tutoring or other services to stay on track academically, that same young person is unlikely to obtain services in his next placement.

The California Constitution provides a potential vehicle to challenge such deficiencies in educational services. Indeed, the California Supreme Court has interpreted the education clause of the California Constitution to confer a fundamental-right status upon education. (*Butt v. State of California* (1992) 4 Cal.4th 668; *Serrano v. Priest* (1971) 5 Cal.3d 584.) While the case law to date has addressed the fundamental right to education in the context of school financing, the equal protection rationale should certainly apply to the disparate treatment suffered by children in the juvenile court system.

TRIAL COURTS' AUTHORITY REGARDING EDUCATIONAL SERVICES

Given the profound educational needs of children in both the foster-care and the delinquency systems, it is no surprise that it is often at the juvenile courthouse where the unaddressed problems of these children collide with the huge systems responsible for them—child welfare, juvenile probation, education, and mental health. Significantly, the role of juvenile court judges has come to incorporate the authority to mandate enforcement of these children's educational rights. Welfare and Institutions Code sections 202, 362(a), and 727(a) give the juvenile court the responsibility for the care and treatment of delinquent and dependent children. The court is empowered to make any and all reasonable orders for their care, including their educational needs. Juvenile court judges are also authorized to join in a juvenile court proceeding any agency that is not meeting its legal obligation to a child, such as the school district or mental health, and to make the orders necessary to compel the services on behalf of a child. (Welf. & Inst. Code, §§ 362(a) and 727.) Additionally, for the growing numbers of children "advancing" on the trajectory from the child welfare system to the juvenile delinquency system, the court can require the probation department and the welfare department to meet, assess the child's needs, and recommend the best plan for a minor. A minor's educational needs must be included in this assessment. (Welf. & Inst. Code, § 241.1.)

Effective January 2000, reunification and other services, including educational services, previously mandated for dependents, must now be provided to certain court delinquents. (See Welf. & Inst. Code, §§ 635, 652, 706.5.) Before a child's disposition is heard, a case plan must be submitted to the delinquency court, which identifies needed services (Welf & Inst. Code, §§ 706.5, 706.6(j)). Here again, the court can make orders concerning educational services for a minor.

Last year, the number-one priority of the Juvenile Court Judges of California (JCJC) was a bill to ameliorate special education services for children supervised by the juvenile court (Assembly Bill 645, which ultimately was not signed into law). This year, the JCJC is backing a similar measure, AB 2375.

There has also been significant leadership from the juvenile court bench to encourage collaborative efforts to improve educational services for these children. In Santa Clara County, the juvenile court has taken the lead in developing Project YEA and the Educational Rights Project to advocate for the timely implementation of special education services and placement for delinquent and dependent minors. Led by the juvenile court, Santa Clara has also established a Special Committee for the Education of Children of the Juvenile Court, a large collaborative convened to meet the educational needs of children in the juvenile justice system.

On a statewide level, one of the most successful collaboratives is the Foster Youth Services Program (FYSP). FYSP is an education-based program that links school districts with child welfare and probation departments to provide educational services such as tutoring, advocacy, assistance with records, and other services for children in foster care. FYSP has a documented success rate in decreasing truancy and improving academic outcomes for foster children. In 1999, the program was expanded statewide to children in group homes only. There is currently legislation pending to expand FYSP statewide for all children in foster care (Assem. Bill 2012).

Increasingly, the FYSP programs are recognizing the importance of partnering with their local juvenile courts. In San Francisco, for example, the juvenile court has played a critical role in the development of its FYSP program. In other counties, such as Riverside and Nevada, the courts have worked with FYSP to develop orders to facilitate the exchange of information between agencies working with foster children.

Juvenile court judges also have the authority to assign advocates to ensure these children obtain the services to which they are entitled. The Court Appointed Special Advocates (CASA)

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Caregivers and the Courts

In July 2000, the Center for Families, Children & the Courts, in collaboration with the National Center for Youth Law, was awarded a grant from the David and Lucile Packard Foundation to evaluate the effects of training foster parents and family-member caregivers about dependency court process and procedure and how to present information about children's needs at juvenile dependency hearings. The project, to be completed in four California counties, will address three research questions: (1) how training in the dependency court process affects caregivers' knowledge and attitudes about participating in court hearings and the likelihood that they will participate; (2) what factors determine how caregiver information is used in judicial decision making; and (3) what can be learned from case studies about the possible effects of caregiver participation on children's well-being.

The grant is part of the CFCC's Caregivers and the Courts Program, which is aimed at ensuring that information from caregivers about dependent children's needs is made accessible to judicial officers. Since passage of the Adoption and Safe Families Act (ASFA) by Congress in 1997, federal law requires that foster parents and family-member caregivers be given notice and the opportunity to be heard at any review or hearing to be held with respect to the child in their care. California law also addresses caregiver participation in dependency court hearings. As states implement the provisions of ASFA, information on how to train caregivers about the court process and appropriate ways to participate in it is in the early stages of development. The National Center for Youth Law is currently using instructional materials developed by CFCC program staff in their caregiver training around the country.

The primary reason for including caregivers in dependency hearings is to facilitate the exchange of information about children that is important for their care. Caregivers may be an important source of information about children because they are in a unique position to know the nature of the care the child requires. They develop a rich, integrated perspective on the children and the children's progress because they routinely talk to children's pediatricians, teachers, therapists, and other service providers. In addition, the direct communication between the caregiver and the court at the time services are ordered allow immediate planning for the delivery of those services. Parents also have an opportunity to develop a relationship with the caregiver and to work together to make decisions that support the return of their child home. This may ease the sense of isolation and the impersonal, bureaucratic aspects of having the juvenile court involved in their lives. An added benefit is that caregiver participation in court hearings may increase their satisfaction with their role, which in turn increases their willingness to continue caring for children. ■

For more information on the CFCC's Caregivers and the Courts Program, contact Regina Deihl, Juvenile Projects Attorney, 415-865-7739, regina.deihl@jud.ca.gov.

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program provides advocates appointed by the court to assist individual children in dependency cases. Given that a child in the juvenile court system may have multiple caseworkers or probation officers over the years, a dedicated CASA can provide the continuity and advocacy needed to advance a child's educational needs. Certain counties, such as San Bernardino, Contra Costa, and Marin, are even expanding CASA to assist in delinquency cases.

The Judicial Council's Center for Families, Children & the Courts recently launched an Educational Advocacy Project in Alameda County whose goal is to meet the educational needs of dependents through direct advocacy. The project has the direct involvement of the juvenile court bench. In San Francisco, the juvenile court now requires children's attorneys to have some basic training in special education. The court is exploring the development of a panel of attorneys specifically trained in special education to represent children and advocate for their educational rights. These efforts mark an important recognition that children in the juvenile court system need skilled and consistent advocates to obtain the services to which they are entitled.

CONCLUSION

The problems concerning the educational needs of children in the juvenile court system are real and dire. The laws designed to protect these children are underutilized. Through advocacy, those working on behalf of dependent and delinquent children can ensure that they receive services they so desperately need. ■

Ms. Kelly was a senior trial attorney on the San Francisco City Attorney's dependency trial team for over 10 years. She is currently an adjunct professor at the University of San Francisco School of Law, where she teaches juvenile law. She is also president of the Volunteer Auxiliary of the Youth Guidance Center and chair of the San Francisco FYSP Steering Committee.

The CASA Infants and Toddlers Demonstration Project

BUILDING A SERVICE INFRASTRUCTURE FOR DEPENDENT INFANTS AND TODDLERS

Mari Demera, Case Manager, CASA of Fresno County
Polly Franson, Executive Director, CASA of Fresno County

Generally, Court Appointed Special Advocates (CASAs) assist abused and neglected children 10 years of age or older who have been removed from their homes and are involved in juvenile court proceedings. However, there is growing concern among many service providers that crucial developmental needs of younger children involved in the juvenile justice system are being ignored. As an expression of this concern, the length of the dependency period for children in this age group changed dramatically in January 1998, when the California Legislature amended Welfare and Institutions Code section 361.5(a), which reduced from 12 to 6 months the length of time a child under 3 years old could stay in foster care. Now, several CASA programs statewide are responding to judges' increased requests for CASA volunteers to assist young children by expanding their programs to include infant and toddler projects, including research and training.

In December 1998, CASA of Fresno County was one of four CASA programs statewide (Fresno, San Francisco, Santa Clara, and Imperial) to receive funding for a three-year Infants and Toddlers Demonstration Project funded by the Stuart Foundation. The initial purpose of the project was to measure the effectiveness of CASA programs in securing expedited permanency for children from birth to 36 months.

In each of the four counties the project is a collaboration of CASA, children and family services, and the juvenile dependency court. According to the project's guidelines, the courts agreed to refer dependent children to CASAs, and each CASA agreed to serve 30 infants and toddlers per year for three years. Specifically, the volunteer would provide an in-depth independent investigation of the child's circumstances, help ensure that court-ordered services were provided, and advocate for the best interest of the child. The four county Departments of Children and Family Services agreed to provide a random-sample comparison group of infants and toddlers without CASAs. Though the initial statistics are not yet available, the project's effect in Fresno County has been remarkable: it has encouraged the development of several new initiatives in the county that are building an infrastructure of services for dependent infants and toddlers.

In Fresno County, the demonstration project revealed that services for dependent infants and toddlers were nonexistent, inadequate, or underutilized. In response, the CASA of Fresno County Infant and Toddler Program was developed. In addition to regular CASA advocate training, an extra 9 to 12 hours is required for those CASA volunteers who wish to advocate for children younger than 3 years old. The program is currently serving 65 infants and toddlers, of whom 30 are statistically counted in the demonstration project. The majority of these infants are drug exposed or have been born into environments that put them at risk both physically and psychologically. Many of the infants have multiple issues that make them medically fragile. Older babies come into the program after several placements and show signs of severe attachment disorder, loss, and grief.

Fresno County has begun several other programs to address the problems of young dependent children:

Infant and Toddlers Task Force. With the support of the dependency court's judicial officers, CASA and the Fresno County Department of Children and Family Services (FCDCFS) built a multidisciplinary task force of professionals from human services department units—Emergency Response, Concurrent Planning, Adoptions, Voluntary Family Maintenance, and county mental health. Also included in the task force are representatives of community agencies such as University Medical Center, Valley Children's Hospital, Exceptional Parents Unlimited, Central Valley Regional Center, LoriAnn Infant Program, Early Head Start, and California State University Foster Parent Training, as well as from foster parent support groups and public health nursing. The task force identified areas within FCDCFS that lacked specific procedures to address the special needs of children younger than 3 years old. The participating organizations and divisions then modified their policies and procedures to include special provisions for children of that age group. The age for immediate CPS emergency response was changed from 0–2 years to 0–3 years so that CPS personnel immediately respond to any complaint or report regardless of the nature of the issue if the child is under 3. Within Voluntary Family Maintenance a separate unit was created in which the Comprehensive Infant Toddler Enrichment Project (CITE) trained staff to identify and refer medically fragile infants and toddlers to the appropriate providers. Homes that care for medically fragile children were reassessed to determine whether or not they were proficient to accept

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CASA Infants and Toddlers Project

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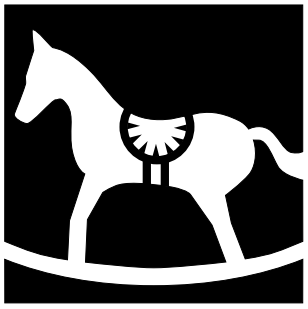
emotionally fragile and drug-exposed infants, and foster parents interested in caring for the most fragile and at-risk infants and toddlers began receiving special training. Additionally, these specialized caregivers are now being supported by nutritionists, respite caregivers, in-home visits by specialists in behavior modification, and special parenting instructors in order to maintain the infants' placements and to reduce the occurrence of multiple caregivers. Many resources and treatment facilities within the community—some that separately focus on the children or the caregiver and several in which caregivers and infants and toddlers interact—have been identified and are being utilized for referral by FCDCFS and the courts. Social workers are also beginning to receive training in infant mental health issues and the effects of multiple placements.



Infant Mental Health Team. Fresno County has developed a mental health program of six clinicians who are assigned to work with infants and toddlers in the dependency system. Services include assessments, evaluations, and treatment, much of which is done in the children's homes.

Infant and Toddler Treatment Team. This team of specialists in infant and toddler mental health, developed as a result of the task force, focuses on the identification of the most serious cases and creates family-based treatment plans with follow-up. The majority of cases are identified and referred by CASA of Fresno County.

An additional service spin-off includes a private infant mental health psychologist providing pro bono treatment with both the reunifying parents and temporary caregivers of a complicated CASA case involving a medically fragile 9-month-old girl.

In an unrelated undertaking, one year after beginning the demonstration project, CASA of Fresno County commissioned a Placement Pattern Research Project in collaboration with California State University, Fresno; University of California, San Francisco; and the California School of Professional Psychology. The goal of the study is to identify quantitative indicators that describe the level of disruption associated with multiple foster placements and compare specific quantitative outcome variables of CASA cases to non-CASA cases. The limited results to date indicate that a child's current age in combination with the age of initial detention significantly predicts the total number of placements far better than the duration of foster care. In other words, the older a child at entry into the foster-care system, the more placements he or she will experience. The Placement Pattern Research Project included both older children and infants and toddlers. In fact, the majority of children in the infant and toddler project (104 total CASA cases) were included in the research project. Interestingly, one indicator suggests that the number of changes in placement appear to be reduced when a CASA is assigned to an infant. This may be because the majority of infant and toddler cases referred to CASA of Fresno are being referred very early in the dependency process, at detention or jurisdiction, which allows the CASA, social worker, and mental health specialists to immediately stabilize the child's placements through the efforts of the above-mentioned agencies and services.

Beginning this year, all California counties have set up Proposition 10 committees to ascertain their priorities in spending millions of dollars in tax revenue as a result of the 50-cent-per-pack tobacco tax. By law, they must spend these dollars on services for children 5 years old and younger. With the Proposition 10 windfall in each California county, funding to begin a project, program, and services targeting infants and toddlers is potentially available. CASA programs in Kern and Alameda Counties have already been granted Proposition 10 dollars to start infant and toddler programs to begin to address potential attachment issues, learning disabilities, and delinquency problems.

In Fresno County, this special focus on infants and toddlers has created a new infrastructure of services for fragile young children primarily because of the cooperation and collaboration of the dependency court, social services system, and CASA. Armed with countywide program successes, these organizations plan to expand services to infants and toddlers in keeping with their collective vision of helping all young dependent children in need. ■

New CFCC Employee

The Center for Families, Children & the Courts is pleased to welcome ***Aleta Beaupied,*** a new attorney working with the Judicial Review and Technical Assistance (JRTA) team. Aleta has 18 years of experience representing children in high-conflict custody disputes and children and parents in abuse and neglect proceedings. She also has expertise in special education. Before practicing law, she was a teacher in the public schools. Aleta enjoys hiking in her spare time. ■

RESEARCH GRANT AWARDS FOR 2000

The Research Grant Program of the Center for Families, Children & the Courts has awarded support of $35,000 to each of three new interdisciplinary projects. The projects will review current literature and empirical studies from the fields of sociology, psychology, education, and law about specific needs of children and families. The goal of each project is to derive from the literature implications for court practice to aid the courts in making decisions about children and families. Documents summarizing the work are anticipated in June 2001.

For additional information, please call Andrea Lash at 415-865-7741 or e-mail her at andrea.lash@jud.ca.gov.

PROJECT: Parenting After Violence: What Children Need From Parents for Positive Development and Functioning

ORGANIZATION: Child Trauma Research Project, University of California at San Francisco

INVESTIGATORS: Alicia Lieberman, Ph.D.; Patricia Van Horn, J.D., Ph.D.

DESCRIPTION: Children who have been exposed to family violence or who have experienced violence may have special parenting needs. Through a review of literature the project will identify information to aid courts in making decisions in the best interest of these children. The review will focus on the ways family violence affects children at various developmental stages and what children at each stage need from their relationships with parents and other caregivers to help restore them to a optimal developmental trajectory. The investigators also will examine research into the effects of family violence on the parents themselves and on the ways that living in a violent household affects parenting. The project will offer recommendations for parents, caregivers, teachers, attorneys, and court professionals to aid children who have been exposed to family violence.

PROJECT: Parenting After Violence: Strategies for Intervention

ORGANIZATION: MINCAVA – Minnesota Center Against Violence & Abuse, University of Minnesota – Twin Cities

INVESTIGATORS: Jeffrey L. Edleson, Ph.D.; Lyungai F. Mbilinyi, M.S.W.; Sudha Shetty, J.D.

DESCRIPTION: This project will provide juvenile and family court personnel with research-based information to assist them in making decisions for family safety. Critical literature and empirical studies will be reviewed and interpreted in light of court decisions. Of central focus will be research on the effectiveness of interventions that courts might recommend for families. Several print and online documents will be created to present this information. Documents will include reviews of best practices in intervention with parents following an incident of child maltreatment and/or adult domestic violence in the home.

PROJECT: Educational Needs of Children Involved in Family and Juvenile Court Proceedings

ORGANIZATION: Mental Health Advocacy Service, Inc.

INVESTIGATORS: Lois Weinberg, Ph.D.; Nancy Shea, J.D.; Andrea Zetlin, Ed.D.; Jan Costello, J.D.

PURPOSE: Decisions made in family and juvenile courts affect the lives of children, including their schooling and access to educational services. These decisions range from the placement of children in out-of-home care to arrangements for child custody and visitation after parents separate to placement in youth or other detention centers. Through a review of literature the project will help court professionals and judicial officers understand the educational system and the ways that court decisions can influence children's access to resources for learning and development. ■

JUDICIAL COUNCIL CREATES PROBATION SERVICES TASK FORCE

The Judicial Council has just appointed a Probation Services Task Force to assess California's programs, services, organizational structures, and funding related to the probation services provided by counties to the courts, probationers, and the general public. The task force will identify, analyze, and prepare a report of findings and recommendations to the Judicial Council, the California State Association of Counties (CSAC), the Governor, and the Legislature regarding probation services in Fall 2001.

The task force includes members appointed by CSAC, the Chief Justice, chief probation officers, and representatives from the statewide probation officers association. Justice Patricia Bamattre-Manoukian of the Sixth Appellate District was appointed by the Chief Justice as a nonvoting chairperson. All participating entities will be able to give input to the task force prior to the report's submission to the council, the Legislature, the Governor, and the general public. The Administrative Office of the Courts will provide staff support for the project.

The task force will address broad issues relating to probation, including:

- ◆ Identifying and evaluating current practices and options for probation services;
- ◆ Identifying the nature and scope of probation services provided by counties to the courts, probationers, and the general public;
- ◆ Identifying and evaluating current practices and options for the delivery of probation services;
- ◆ Identifying and evaluating various organizational structures for adult and juvenile probation services;
- ◆ Identifying and evaluating practices of other jurisdictions with regard to

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Probation Services Task force

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range of probation services and levels of funding; and

◆ Identifying the appropriate relationship between probation services and the courts.

As with all Judicial Council committees and task forces, the role of this task force will be to formulate findings and policy recommendations for the Judicial Council. Staff will be assigned to support the efforts of the task force, including logistics, preparing information, and determining how best to collect and prepare information to respond to questions for the task force as well as to support task force deliberation. For further information regarding the task force, call Ms. Audrey Evje at 415-865-7739 or e-mail her at audrey.evje@jud.ca.gov. ■

NOVEMBER IS

Adoption Month

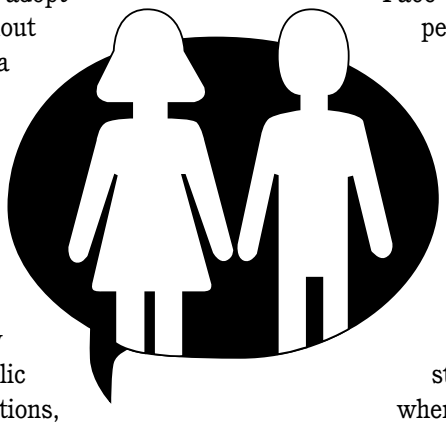
Angela Gaylord

In 1999, the Judicial Council, the Administrative Office of the Courts, the Governor, and the Legislature joined in proclaiming November Adoption and Permanency Month.

As of March 31, 1999, 547,000 children were in foster care in the United States. In California alone, 106,000 children are still in out-of-home care. In an effort to streamline the permanency process, the Judicial Council of California is encouraging counties across the state to dedicate time and resources to adoption during Court Adoption and Permanency Month.

At the state level, a permanent resolution has been passed by the Judicial Council, and the Legislature and Governor will join in proclaiming November 2000 Court Adoption and Permanency Month.

Each county develops its own programs for Adoption Month. In Amador County the court and TSPN cable channel presented a televised forum on August 15 in which a family court judge, a foster parent, a social services representative, and an adult who was a foster child discussed the realities of the adoption process. Last November, community members in Alameda County read names of adoptable children throughout its day-long "It Takes a Community" program sponsored by the Oakland Adoption Providers, a consortium of Black Adoptions, Placement, and Research Center and Family Builders, to raise public awareness about adoptions, recruit adoptive parents, and attract media attention. The ceremony was followed by a candlelight vigil.



Where adoption backlog remains a concern, counties are using Adoption Month celebrations to finalize adoption proceedings. Los Angeles, for example, will hold its ninth Adoption Saturday on November 18. Nearly 2,500 adoptions in Los Angeles County have been finalized on Adoption Saturday through the volunteer efforts of judges, attorneys, bailiffs, law students, and community volunteers. At the suggestion of Los Angeles County Judge Michael Nash, Dallas, New York City, Washington, D.C., Chicago, and Columbus, Ohio, will also hold Adoption Saturday events on November 18. Last year, the media and California's Supreme Court Chief Justice George joined in the festivities.

Adoption Day in Fresno County is held at a ranch. There are some adoption finalization proceedings, but the day is also planned as a celebration for all the adoptive families and the children who were adopted throughout the year. In Sacramento County, Adoption Day takes place at the courthouse. Last year, Sacramento initiated new events to make this day a success. Each adopted child made a handprint on a piece of ceramic tile, then the tiles were arranged together and now hang in the new Sacramento courthouse. Court officials also instituted a Beanie Baby adoption program in which each newly adopted child got to choose a Beanie Baby in the courtroom to take home. Face painting and clown performances added to the celebration.

Each of these programs addresses a different issue: public awareness, limited programming, or extensive backlog. In your community, look at the statistics to determine where the program needs to be strengthened. If many children are waiting for an adoption to be finalized, then an Adoption Day activity may be helpful. But if there are children waiting to be adopted but no adoptive parents, an adoptive parent recruitment activity fits the needs of the county best. This November, let's not only help spread awareness of the need for adoptive parents, but also celebrate the birth of new families.

The Center for Families, Children & the Courts has developed a technical assistance packet describing pro gramming that may be used during Court Adoption and Permanency Month or throughout the rest of the year. The packet has been sent to all juvenile courts in California. If you did not receive the packet and would like one, please contact the CFCC at 415-865-7739. ■

CFCC to Host Juvenile Delinquency Conference

The Judicial Council Center for Families, Children & the Courts (CFCC) has received funding from the State Justice Institute (SJI) to host the Juvenile Delinquency and the Courts conference from Thursday, January 25 through Saturday, January 27, 2001, at the San Diego Holiday Inn on the Bay. Invitations to the conference will follow the county team structure, with the team captain of each county selecting the 10 team members.

The purpose of the Juvenile Delinquency and the Courts conference is to conduct a coordinated review of youth problems and incarceration patterns in California and to develop a comprehensive intervention plan. While juvenile delinquency has always generated attention, recent years have seen a wave of public awareness of juvenile crime. The conference occurs at a crucial time, when it can respond to the current need of California courts for practical, effective, and coordinated approaches to the handling of juvenile delinquency cases.

The conference will be structured as educational workshops and opportunities for teams to meet and work together. It will encourage participation, interaction, and the development of positive, concrete outcomes in the form of specific action plans to be implemented by each county in California. The conference will follow eight tracks, each comprising four workshops. The tracks are Court and Community, The Roots of Violence, Special Cases, Gender and Race, Children in the System, Prevention and Punishment, Restorative Justice, and Violent Youthful Offenders/Accountability.

Plenary speakers for this conference include Hon. Susan Carbon, Superior Judge of the Graffton County Court Family Division (New Hampshire); Hon. Bill Lockyer, California Attorney General; and Mr. Dennis Maloney, Director, Deschutes County Community Justice (Oregon).

One of the most important goals of the conference is the creation of a juvenile delinquency team, or working group, for each county. These teams can benefit the courts directly by bringing home not only new knowledge, motivation, and professional resources, but also written county action plans. This team approach is based on a proven model for local action and statewide coordination on the topic of domestic violence—a model that the Judicial Council has adopted. We aim to replicate this effective and dynamic model to address the pressing need for new ways of thinking about and tackling juvenile delinquency.

Juvenile delinquency affects our entire court system and our communities. Our judiciary deals with the effects of juvenile delinquency on a daily basis. The outcome of the conference should enable each county to make great strides toward meeting the California courts' improvement goals. For further information about the conference, call

Annual Educational Training Institutes

SPONSORED BY THE CENTER FOR FAMILIES, CHILDREN & THE COURTS

SOUTHERN AND CENTRAL COAST FAMILY COURT SERVICES REGIONAL TRAINING
October 26–27, 2000
Marquis Hotel, Palm Springs

FAR NORTHERN FAMILY COURT SERVICES REGIONAL TRAINING
November 2–3, 2000
Mount Shasta Resort

BAY AREA FAMILY COURT SERVICES REGIONAL TRAINING
November 16–17, 2000
Holiday Inn Bay Bridge, Emeryville

BEYOND THE BENCH XII
December 6–8, 2000
Sheraton Universal Hotel, Universal City

JUVENILE DELINQUENCY AND THE COURTS: A CALIFORNIA STATEWIDE CONFERENCE
January 25–27, 2001
San Diego Holiday Inn

FAMILY LAW FACILITATOR TRAINING IN CONJUNCTION WITH FAMILY SUPPORT COUNCIL TRAINING
February 20–23, 2001
Palm Springs

FOR ADDITIONAL INFORMATION ON DATES AND LOCATIONS, PLEASE CALL 415-865-7741 OR 865-7739

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Director's Corner

This is the first of a regular column by CFCC Director Diane Nunn that will focus on issues of importance to children, families, and the courts.

How many children are in the California court system? Unfortunately, that's a question we can't answer right now. We do know that children are parties, witnesses, or the subject of a variety of court proceedings—juvenile dependency, mental health, family law, delinquency, status offenses, domestic violence, paternity, child support, guardianship, adoption, emancipation, traffic, civil, and criminal. However, we do not know how many children there are or who they are.

We do not know how many children are under the jurisdiction of the juvenile court for child abuse and neglect, criminal offenses, or status offenses. We therefore do not know how many of those children are dependents of the juvenile court because of neglect, abuse, or a combination of the two. Nor do we know how many children are wards of the juvenile court because of specified offenses. How many are repeat offenders? How many were waived to adult court? How many had previously been dependents of the juvenile court?

Who are these children—our children? What are their ages, their backgrounds, their histories? Do they belong to sibling groups? Are they involved in protracted child custody proceedings? Do they repeatedly witness violence at home? Are they being raised by the juvenile court, spending most of their lives moving from one foster home to another? Are they or their families in multiple court proceedings? Do proceedings involving children and families make up 10, 20, or 50 percent of the court workload? We do not know.

The judicial system is charged with providing fair and accessible justice for all. In order to do that, we must know whom we are serving. Informed decision making is the cornerstone of a fair and just judicial system, whether in an individual case or in the aggregate. It is therefore imperative that we know how many children are in the courts. We cannot allocate resources in an informed manner if we don't know the types of cases in our court system. Without this information, how can we as a society establish good policy?

The future need not be so bleak. Recently, the Judicial Council adopted its operational plan for fiscal years 2000–2001 through 2002–2003. Included in that plan, under Goal IV, Quality of Justice and Service to the Public, is the following objective: "Expand access and fairness for children who are before the court or affected by court proceedings." In furtherance of that objective, the council will be working to collect adequate data describing the characteristics and the numbers of children before the California courts by June 2003. Improved technology, a new statewide data collection system, and recent federal legislation may begin to provide us with the tools to gather that information. However, to be successful in achieving this outcome, we—all of us who work in the courts—must make this effort a priority in the judicial system. If you have suggestions, please let us know. We welcome your input.—*Diane Nunn*

Delinquency Case Summaries

CASES PUBLISHED FROM MAY 1, 2000, TO JULY 20, 2000

In re Melvin J. **(2000) 81 Cal.App.4th 742 [96 Cal.Rptr.2d 917]. Court of Appeal, Second District, Division 5.**

The juvenile court sustained a petition that a 16-year-old child violated Penal Code section 245(a)(1) when he committed a felony assault with a weapon. Subsequently, because the child violated his probation, the juvenile court lifted a stay of commitment and ordered the child to be transported to the California Youth Authority (CYA).

The child was a member of a gang and was involved in an altercation at a pool hall with another gang. He hit a member of the other gang in the head with a pool cue and was charged with assault with a deadly weapon. The child was placed on house arrest probation in which any violation would result in a sentence to CYA.

At the disposition hearing, the juvenile court stated that it would impose a commitment to CYA but would stay the commitment because the child appeared to be doing well at home and school. Days after the hearing, the child broke the windows of his brother's car with a metal object and the windows of his mother's house with a brick. The mother called the probation officer, and the matter was set days later for a violation-of-probation hearing. At the conclusion of the evidentiary hearing, the juvenile court lifted the stay and sent the minor to CYA. The minor appealed, contending that the juvenile court erred (1) at the original disposition hearing, when it failed to consider the most recent probation report; (2) when it stayed the commitment to CYA; (3) when it failed to consider the psychiatric report at the section 777(e) hearing; and (4) when it conducted the hearing pursuant to former section 777(e) instead of former section 777(a).

The Court of Appeal considered each of these contentions and determined that the child could not raise issues relating to the original disposition hearing because he did not specifically appeal the order, and even if he had properly raised these contentions on appeal, the juvenile court committed no error. The appellate court affirmed the original dispositional order because the juvenile court did not err when it conducted the hearing without the latest probation report. The juvenile court also correctly stayed the commitment to CYA because the child appeared to be doing well at home and at school and the only additional information contained in the latest probation report was that the court should perhaps give the child another chance. Most important, however, the juvenile court did commit error by not making findings required under section 777(a) before lifting the stay of commitment to CYA.

On March 7, 2000, California voters approved Proposition 21, which amended the Welfare and Institutions Code, adding section 777, specifically removing section 777(e), and amending section 777(a). The juvenile court in this case handled the matter under section 777(e).

Under former Welfare and Institutions Code section 777(a), a court could not lift a stay of a CYA commitment unless, when considering a supplemental petition, it determined that the child did commit a violation and it proceeded to (1) hold an evidentiary hearing, (2) decide if on the whole record the prior dispositional order had entirely failed, and (3) determine if a more restrictive level of confinement was necessary for the child's rehabilitation. Here, the juvenile court found that the violation had occurred but made no other findings.

The appellate court was guided by the case of *Carmell v. Texas* (1999) ___U.S.___[120 S.Ct. 1620; 2000 Daily Journal D.A.R. 4521], which upheld four categories of ex post facto principles that cannot be applied to conduct occurring before their effective dates. At issue was the fourth category, which states that a law violates ex post facto principles if it alters the legal rules of evidence and requires less or different testimony than the law required at the time of the commission of the offense in order to convict the offender. Because the new version of Welfare and Institutions Code section 777(a) deletes some of the requirements of the former 777(a) and allows commitment to CYA on less or different evidence, the new version violates ex post facto principles and cannot be utilized on remand. The failure of the court to make the appropriate findings under former Welfare and Institutions Code 777(a) was prejudicial, and a hearing on remand was ordered. The lifting of the stay of CYA commitment was reversed. The Court of Appeal also determined that the failure of the court to obtain and consider the psychiatric report was moot since a new hearing would be held on remand.

In re Giovani M. **(2000) 81 Cal.App.4th 1061 [97 Cal.Rptr.2d 319]. Court of Appeal, Second District, Division 5.**

The juvenile court adjudicated a child as a ward upon his admission to acts violating Penal Code section 246.3, unlawful discharge of a firearm with gross negligence (count 2) and Penal Code section 12101, unlawful possession by a minor of a firearm capable of being concealed upon the person (count 3). The child was also charged with Penal Code section 245(a)(2) and sections 12022.5(a) and (d) (assault with a firearm and personal use of a firearm in the commission of the offense). The child and two other people were chasing two men. The child shot four shots from a handgun in the direction of the two men. The police responded to the shooting

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Delinquency Case Summaries
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and detained the fleeing child. Pursuant to his admission agreement with the district attorney, the child was committed to the California Youth Authority (CYA) for the maximum aggregated period of five years and two months.

The child appealed, claiming that the juvenile court erred in sustaining count 3 because it was a necessarily included offense of count 2 and that the juvenile court violated Penal Code section 654 (double punishment) when it imposed two consecutive terms for both count 2 and count 3.

The Court of Appeal affirmed the decision of the juvenile court. The juvenile court had dismissed the most serious of the charges, the assault charge. When the child chose to avoid a longer sentence by admitting counts 2 and 3, the child waived the right to claim that the juvenile court was precluded from sustaining the petition on count 3. The child had received the benefit of his bargain and should not be allowed to "trifle with the courts" by trying to better his bargain through the appellate process. The appellate court determined that count 3 is not a necessarily included offense because count 2 can be committed without committing count 3. It is possible to commit a discharge of a firearm that is not concealable, and this commission would not violate count 3. Therefore, the appellate court agreed with the juvenile court's decision to sustain both counts. Also, the child waived any right to raise for the first time on appeal a claim under Penal Code section 654, when he agreed to accept a more lenient maximum term than he might have received had he not entered into an agreement. The agreement resulted in the dismissal of enhancement allegations and more serious charges. Therefore, the appellate court rejected the child's contention.

In re Pedro M. **(2000) 81 Cal.App.4th 550 [96 Cal.Rptr.2d 839]. Court of Appeal, Second District, Division 2.**

The juvenile court adjudicated a child a ward after he admitted to committing a violation of Penal Code sections 288(a) and (b)(1) and 459 (committing a forcible lewd act upon a child under 14 years old and second-degree commercial burglary.) The juvenile court ordered the child to cooperate in a plan for psychiatric and psychological testing and treatment and to be suitably placed subject to probation conditions. The child refused to comply with the treatment plan, which included attendance at a sexual offender program that the court recommended. The state filed a supplemental petition under Welfare and Institutions Code section 777(a) alleging that the placement was ineffective after 18 months and that the child should be committed to the California Youth Authority (CYA). The juvenile court found at the adjudication hearing that the child had failed to comply with his treatment plan and had violated probation, and therefore the court ordered him to be committed to CYA for the maximum period of 11 years and 8 months. The juvenile court did not specify the number of days of predisposition credit the child had accrued. The child appealed, claiming that (1) there was insufficient evidence to support the juvenile court's findings, and that the court erroneously admitted testimony of his psychotherapist after he had invoked the psychotherapist-client privilege; (2) the juvenile court abused its discretion by committing the child to CYA; and (3) the juvenile court failed to determine the child's accrued predisposition credits.

The Court of Appeal affirmed the juvenile court's order to sustain the supplemental petition and to commit the child to CYA. The case was remanded, however, for the juvenile court to calculate the child's predisposition credits.

Regarding the privilege issue, the appellate court stated that the juvenile court's ability to assess the child's success in the sexual offender program would be diminished without feedback from the child's psychotherapist. Disclosure of confidential communication between a patient and psychotherapist is permitted when the disclosure is reasonably necessary for the accomplishment of the purpose for which the therapist was consulted. (Evid. Code, § 1012.) The appellate court concluded that the disclosure of the information sought by the juvenile court was permitted under section 1012. Because the therapist did not testify regarding any advice given to the child, the child's specific statements, or any diagnosis given, the psychotherapist's testimony concerning the child's participation and progress in the court-ordered treatment plan did not infringe upon the psychotherapist-client privilege. The psychotherapist's testimony regarding the child's failure to progress through the sexual offender program and his dishonesty warranted a finding that the child had violated his probation conditions.

The child's commitment to CYA based on his failure to progress in a well-reputed sexual offender program was appropriate. The appellate court remanded the case to the juvenile court to calculate the amount of precommitment custody credit to which the child was entitled, to amend the commitment order reflecting the calculated credit, and to forward a copy of the commitment order to CYA.

In re Eduardo D. **(2000) 81 Cal.App.4th 545 [97 Cal.Rptr.2d 38]. Court of Appeal, Second District, Division 5.**

The juvenile court declared a child a ward of the court under Welfare and Institutions section 602 when the child committed grand theft. The child approached another boy and began a fight by punching the boy in the face.

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The child threw a radio player at the boy's head and hit the boy in the head with a metal rod. When the boy was able to get away and began running, his cap and backpack were left on the ground. The juvenile court ordered that the child be placed in a juvenile camp and ordered that the child not be held in physical confinement for a period exceeding three years. The child appealed, claiming that there was insufficient evidence for the juvenile court to find that he had committed grand theft and that the juvenile court had failed to determine whether the grand theft was a felony or a misdemeanor.

The Court of Appeal affirmed the decision of the juvenile court and remanded the case for the juvenile court to determine if the theft was a felony or a misdemeanor. Grand theft is committed when property is taken from the person of another. (Pen. Code, § 487). The child in this case argued that the boy had left his backpack and cap when the boy began running away from the child. The backpack and cap were 10 to 15 feet from the child when he took possession of the items. The appellate court reasoned that the boy did not leave his items voluntarily; he left the backpack and cap as a direct result of the child's assault. Even though the boy ran away from his items, this did not constitute abandonment. Welfare and Institutions Code section 702 states that the juvenile court must declare an offense as a felony or misdemeanor. In this case, the juvenile court did not indicate on the record whether the theft constituted a felony or a misdemeanor, and it did not indicate awareness of its discretion to make this determination. Although the appellate court suggested that a felony charge was probably appropriate, it remanded this decision to the juvenile court.

In re Randy G. **(2000) 80 Cal.App.4th 1448 [96 Cal. Rptr.2d 338]. Court of Appeal, Second District, Division 3.**

The juvenile court adjudicated a child a ward of the court for violating Penal Code section 626.10 (possessing a locking-blade knife on school grounds.) A school security officer found the child and a friend congregating in a prohibited area. Upon seeing the security officer, the child began acting nervous and fixed the protruding lining in his pocket. Shortly after the child returned to class, the security officer and a second security officer requested to see the child outside of his class. The second security officer asked to check his pockets and the child consented. A locking-blade knife was found in the child's pocket. The child contended that there was no reasonable suspicion of criminal activity, he was detained unlawfully, and the knife was required to be suppressed. The child appealed, claiming that the knife seized by the security officers was obtained in violation of his Fourth Amendment rights.

The Court of Appeal affirmed the juvenile court's denial of the motion to suppress the knife and the juvenile court's order. A search of a student must be based on reasonable suspicion that the student has engaged or is engaging in an activity that is violative of a school rule or criminal statute. (*In re William G.* (1985) 40 Cal.3d 550 [221 Cal.Rptr 118].) The appellate court discussed the issue of detention and held that an officer may detain a student if the officer has a reasonable suspicion that the student has been or is engaging in criminal activity. Students and staff of primary and secondary schools have an inalienable right to attend safe and secure campuses. The appellate court determined that the child's violation of the school rule prohibiting congregation in certain places, in conjunction with his nervous reaction and fixing of the protruding lining in his pocket, yielded a reasonable suspicion justifying the child's detention. The knife was lawfully seized after a consensual search. Therefore, the child's Fourth Amendment rights had not been violated, and the motion to suppress the knife was correctly denied.

In re Kenneth H. **(2000) 80 Cal.App.4th 143 [95 Cal.Rptr.2d 5]. Court of Appeal, Third District.**

The juvenile court denied a child's motion for specific enforcement of a plea agreement. The child was charged with violating Penal Code section 597(a), inflicting cruelty upon an animal. Before the contested hearing, the child entered into an agreement with the deputy district attorney (D.A.) that if he passed a polygraph examination, the prosecutor would dismiss the case, and if the child failed the examination, the D.A. would admit the charge as a misdemeanor. The child passed the polygraph examination. The D.A. proceeded with the trial, and the child moved for specific enforcement of the agreement. The juvenile court denied the motion and sustained the charge of a misdemeanor that included a drug search probation condition. The child raised the following issues on appeal: (1) the drug search condition was improperly opposed, and (2) the juvenile court erred in allowing the People to renege on the plea agreement. The state

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conceded that the imposition of the drug search condition was improper, and the appellate court held that the condition be stricken.

The Court of Appeal reversed the juvenile court's order denying the child's motion to compel specific performance on a plea agreement. The appellate court noted that a plea agreement would not resolve a case until a court approves it. The child argued that he detrimentally relied on the plea agreement with the D.A. when he gave up his Fifth Amendment right against self-incrimination and paid for the polygraph examination. The appellate court relied on *People v. Rhoden* (1999) 75 Cal.App.4th 1436, 1355 [89 Cal.Rptr.2d 819], which stated that detrimental reliance may be demonstrated where the defendant has performed some part of the bargain. Because the child in this case paid for and submitted to the polygraph examination, the appellate court concluded that the child took a "substantial step toward fulfilling his obligation." It concluded that the prosecution should be bound by its agreement. The failure of a prosecutor to fulfill his or her promise affects the fairness, integrity, and public reputation of judicial proceedings. (*U.S. v. Goldfaden* (5th Cir. 1992) 959 F.2d 1324, 1328.) The appellate court directed the People to file a motion to dismiss the petition, stating that the juvenile court may grant the motion and dismiss the petition or deny the motion on a new ground. ■

Dependency Case Summaries

CASES PUBLISHED FROM MAY 1, 2000, TO JULY 20, 2000

***Southard v. Superior Court of Los Angeles County* (2000) 82 Cal.App.4th 729 [98 Cal.Rptr.2d 733] 2000 Daily Journal D.A.R. 8311. Court of Appeal, Second District, Division 2.**

The juvenile court granted a child's motion to join the Los Angeles Department of Mental Health (DMH) and the Los Angeles Unified School District (LAUSD) as parties in a dependency action. A referee was assigned to hear the dependency matter, where the child contended that joinder of DMH and LAUSD was required so that the juvenile court could enforce compliance of their obligations to provide mental health and special educational services. DMH requested that the joinder motion be transferred to a superior court judge and would not stipulate to a hearing by a referee. The request of transfer was denied and the joinder motion was granted. DMH's motion for reconsideration was also denied and therefore DMH petitioned for a writ of mandate. LAUSD was not party to the writ proceeding. DMH claimed that a superior court judge should hear the proceeding and that there were insufficient grounds for joinder.

The Court of Appeal held that the proceeding did not have to be heard by a superior court judge and that the joinder motion should have been denied. A referee shall hear all cases assigned to him or her by the presiding judge of the juvenile court with the same powers as a judge of the juvenile court. (Welf. & Inst. Code, § 248).) The referee in this case had the same powers as a juvenile court judge to hear the joinder motion. Because DMH refused to stipulate to the referee hearing the joinder motion, Welfare and Institutions Code section 250 was triggered and DMH could have sought rehearing under Welfare and Institutions Code section 252. Prior to 1997, section 252 provided that a child or his parent or guardian could seek rehearing. In 1997, "the county welfare department" was also given that same right. The appellate court, construing the legislative intent of section 252, concluded that "county welfare department" includes agencies such as DMH that provide social services to children adjudged dependents of the juvenile court. The referee in this case was not required to obtain a stipulation before acting on the child's joinder motion.

The juvenile court may join any agency in the juvenile court proceedings that has failed to meet a legal obligation to provide services to the minor. (Welf. & Inst. Code, §362(a).) The child's motion did not contain this allegation. There was no evidence demonstrating that DMH had violated its legal obligation to provide services to the child. Although DMH became aware of the child's needs at the hearing and may have later violated its duty, at the time the court considered the joinder motion there was no evidence to support DMH's violation of its legal duty. The appellate court determined that the joinder motion was improper and ordered the juvenile court to set aside the order.

***In re Kelly D.* (2000) 82 Cal.App.4th 433 [98 Cal.Rptr.2d 188]. Court of Appeal, Third District.**

The juvenile court ordered reduction in a father's visitation with his three children and denied him a contested hearing. The three children had been removed from their mother's home

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because it was uninhabitable. The dependency petition filed by the Siskiyou County Human Services Department (HSD) was sustained, and the juvenile court ordered the children's placement with their father under the court's supervision. HSD later filed a supplemental petition alleging that the father was using methamphetamine, that he had abused the children's half-brother, and that the home was unsafe. The juvenile court sustained the petition and placed the children in long-term foster care. The father was permitted weekly supervised visits with his children. Although these visits were generally positive, one year later the social worker reported that the father was discussing inappropriate matters with his children and the social worker had to intervene during the visits. At the status review hearing, the Human Services Department requested that the visits be changed from weekly to monthly. The juvenile court ordered that the father could visit with his children monthly. The father's attorney requested a contested hearing, but the request was denied. The father appealed, claiming that he was entitled to notice of the proposed reduction and a contested review hearing.

The Court of Appeal reversed the juvenile court's decision to reduce the number of the father's visits with his children and denied him a contested review hearing.Welfare and Institutions Code section 366.3(e) entitles parents of children in long-term foster care to notice and participation in a six-month review hearing. The term "notice" applies to proposed modifications to juvenile court orders, and the term "participate" means that a party may challenge proposed court modifications. The appellate court noted that although the statute does not expressly address visitation, it is proper issue to address at a hearing as it pertains to the parent as well as the child. According to section 366.3(e), a parent has the opportunity to demonstrate that additional reunification efforts would be beneficial to the child.

Distinguishing the case from *In re Ingrid E.* (1999) 75 Cal.App.4th 751 [89 Cal.Rptr.2d 704], in which an 18-month review hearing was denied, in the instant case the statute makes clear that at the six-month postreunification hearing parents have the right to participate in the hearing, including challenging proposed modifications. The appellate court stated that review hearings are a "critical aspect of our state's dependency system and although expediency is an essential goal, accommodating the rights of parents who wish to reestablish a parent-child relationship is a vital objective as well." Under section 366.3(e) the father in this case was entitled to a contested hearing where he had the right to submit evidence, testify, and cross-examine witnesses. The appellate court remanded the case to the juvenile court to conduct the contested hearing on the proposed reduction of the father's visits with his children.

***In re Jasmine G.* (2000) 82 Cal.App.4th 282 [98 Cal.Rptr.2d 93]. Court of Appeal, Fourth District, Division 3.**

The juvenile court decided to remove a 15-year-old girl from both her mother and her father. The child was removed from her mother's home when it became evident that she had been struck by both parents for having a boy in the home. While the child was in foster care, both parents completed parenting classes and sought therapy. At the dispositional hearing the parents testified that their attitudes toward corporal punishment had changed, and the child indicated that she would like to return to either of her parents' homes. There was evidence that the child was not in danger if she returned to either home. The social worker testified that the parents lacked the understanding of their child's adolescent issues. The mother appealed the decision of the juvenile court removing her daughter from her care. The Court of Appeal reversed the juvenile court's dispositional order. Welfare and Institutions Code section 361(c) requires that there be substantial danger to the child's health, safety, protection, or physical and emotional well-being before a child can be removed from his or her home. The evidence indicated that the teenage girl could be returned to the home of either of her parents. She was not in fear of her parents and wanted to return. The appellate court determined that evidence regarding the parents' skills and their inability to comprehend their child's typical teenage behavior inexplicably filled the trial court record. For example, at the hearing, some of the issues discussed were the child's chance to earn the ability to go out with friends, the child's grades, whether she could wear sparkly or red nail polish, whether she could shave her legs, and whether she could hang out at the mall with friends. The appellate court noted that the dependency statutes do not prohibit overprotective parenting or rigid parenting philosophies.

The appellate court also addressed the issue of corporal punishment as a private matter. In the instant case the removal order could not be based on physical discipline. The trial court also addressed an incident in which the child's mother apparently tried to forcibly remove her daughter's nose stud. When the child was in detention, she had had her nose pierced. The incident with the mother did not rise to the level of clear and convincing evidence of substantial danger, especially because evidence that the child opposed the removal of the nose stud was lacking. The appellate court stated: "The inability of the parents to 'understand' their

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teenage children is simply part of the human condition. Even the best intentioned parents, secular, religious or otherwise, will fail to have a complete understanding of the fine nuances of teenage subculture in a postmodern industrial society." The appellate court also questioned why the child had not been returned to her father. The child preferred to return to her father, section 361 does not require that therapy be completed before the child's return, and the child was placed with her father for a 60-day visit. Because the child was not in substantial danger if placed in either of her parents' homes, the dispositional order was improper. The appellate court reversed the decision of the juvenile court and remanded to determine with which parent the child would be best placed.

***In re Brison C.* (2000) 81 Cal.App.4th 1373 [97 Cal.Rptr.2d 746]. Court of Appeal, Fifth District.**

The juvenile court determined a child a dependent and ordered that he not be returned to either parent. The child's parents were in a custody battle. Although the mother claimed that the father sexually abused her nine-year-old child and the father claimed that the mother physically abused the child, both allegations were unsubstantiated. However, the Fresno County Department of Social Services (DSS) filed a dependency petition alleging that the child was suffering from emotional damage because of his parents' dispute. The juvenile court concluded that the allegation was true and the child remained in his foster-care placement.

The child adjusted well to the foster placement, was healthy, and was doing well in school. Based on a series of psychological evaluations throughout the next year, it was apparent that the child was afraid to return to his father. The parents claimed that the determination of their child as a dependent was improper.

The Court of Appeal reversed the juvenile court's order that the child came within the statutory definition of a dependent child. The appellate court held that there was insufficient evidence to support a jurisdictional finding, citing that the young boy's fear and aversion to his father may have been unrelated to the custody battle. The appellate court determined that the record did not show substantial evidence of behavior indicative of severe anxiety, depression, withdrawal, or untoward aggressive behavior. The evidence also did not show that the child was in significant danger of suffering serious emotional danger. The dependency finding could not be supported solely by the child's aversion to his father. The appellate court concluded that juvenile court resources should be reserved for neglected and genuinely abused children and should not be an alternate forum for custody disputes. The appellate court remanded the case to family court.

***In re Renee J.* (2000) 81 Cal.App.4th 1019 [97 Cal.Rptr.2d. 310]. Court of Appeal, Fourth District, Division 3.**

The juvenile court denied a mother reunification services with her daughter and set the matter for a permanency planning hearing. The mother had a long history of drug use, and the juvenile court had terminated the mother's parental rights regarding three other children. The daughter was born without a positive toxicology screen. The mother was arrested for failing to turn herself in on charges of receiving stolen property and possessing identification to commit forgery. Because upon her arrest the mother could not name any relatives to take care of her daughter, the child was detained by the Social Services Agency (SSA). At the jurisdictional hearing, the county counsel stated that the request would be based on Welfare and Institutions Code section 361.5(b)(10) and not on (b)(12). The mother, her housemate, and her boyfriend's mother attested that she was not using drugs. The social worker testified that she had not investigated any recent drug use and that her determination that the mother was unable to

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care for her daughter was based both on the history of drug use and on the mother's failure to complete a rehabilitation program. The juvenile court denied reunification services based on sections (b)(10) and (b)(12). The mother contended that (1) there was no evidence to support a finding of jurisdiction, (2) the court could not properly deny reunification services based on section (b)(12) when SSA waived reliance on that section, and (3) the court could not properly deny reunification services based on (b)(10) because of insufficient evidence.

The Court of Appeal sustained the mother's writ petition. Regarding the mother's first contention, the juvenile court's finding of jurisdiction was based on several provisions of Welfare and Institutions Code section 300. The mother did not argue against the court's reliance on sections (g) and (j), and therefore any error was harmless. The appellate court agreed with the mother's contention that the denial of reunification services could not be based on section (b)(12) because SSA specifically waived reliance. Because any reliance on section (b)(12) was waived and the mother had no notice that it was in issue, the court erred in denying reunification services on that basis. The appellate court also agreed with the mother that the evidence was insufficient to warrant a denial of reunification services based on (b)(10). There was no evidence that the mother was still using drugs and ample evidence that she had abstained from use. The appellate court noted that abstinence from drug use is the ultimate goal and that SSA's argument that the mother had not completed any programs was unconvincing. The mother's prior drug use would become an issue were she to fail to comply with her reunification obligations. The appellate court ordered the juvenile court to vacate its order denying reunification services and setting a Welfare and Institutions Code section 366.26 hearing. The appellate court ordered the juvenile court to hold a new dispositional hearing and to offer reunification services to the mother and child.

In re Letitia V. **(2000) 81 Cal.App.4th 1009 [97 Cal.Rptr.2d 303]. Court of Appeal, Fourth District, Division 3.**

The juvenile court denied a mother reunification services with her child and set a Welfare and Institutions Code section 366.26 hearing. When the child was born under the influence of cocaine, he was taken into protective custody by the Orange County Social Services Agency (SSA). The mother had a history of abusing and neglecting her children and had been involved with SSA regarding the child's siblings. After she had spent years battling drug addiction and entering and leaving drug treatment programs, the child's three siblings were freed for adoption. The child was placed with a relative, where he adjusted well. The social worker's pretrial report recommended that reunification services not be offered under Welfare and Institutions Code section 361.5(b)(10) and (12). At issue was the applicability of the Indian Child Welfare Act (ICWA), and the jurisdictional hearing was postponed for the mother's tribe to submit a brief. After argument at the dispositional hearing, the juvenile court determined that active efforts had been made to prevent the breakup of the Indian family and that sections 361.5(b)(10) and (12) were applicable. The juvenile court declined to offer reunification services and set a section 366.26 hearing. The mother and the Indian tribe appealed the decision.

The Court of Appeal affirmed the decision of the juvenile court. A party seeking to terminate parental rights of an Indian child must satisfy the court that "active efforts" have been made to provide remedial and rehabilitative services designed to prevent the breakup of the Indian family. (25 U.S.C. § 1912(d).) The mother and tribe argued that unsuccessful reunification efforts with a child's siblings do not satisfy the mandate of 25 U.S.C. § 1912(d). The appellate court, relying on holdings from a number of jurisdictions, disagreed, stating that active efforts can be defined as timely and affirmative steps taken to avoid breaking up Indian families whenever possible by providing services designed to remedy problems that might lead to severance of the parent-child relationship. The mother's history with illegal substances was extensive, and the mother and tribe failed to suggest any other services that were both sensitive to the mother's culture and capable of adequately addressing her substance abuse problem. The appellate court stated that neither state nor federal law required SSA or the juvenile court to duplicate the extensive efforts that had previously been made to assist the mother with her drug problem. Federal law does not require duplicative reunification services. The appellate court affirmed the decision of the juvenile court in denying reunification services to the mother.

In re Frank L. **(2000) 81 Cal.App.4th 700 [97 Cal.Rptr.2d 88]. Court of Appeal, Fourth District, Division 1.**

The juvenile court ordered that a child be placed with his paternal aunt in North Carolina. The child has two siblings. When their mother was incarcerated, a dependency petition was filed for all of the children. At the 12-month review hearing the child was found not to be a proper subject for adoption and no one was willing to accept legal guardianship. Months later, a paternal aunt in another state was approved as an acceptable caretaker. The child's siblings opposed the separation from their brother, but the child's social worker determined that the move was not detrimental to the child. The mother appealed the decision of the juvenile

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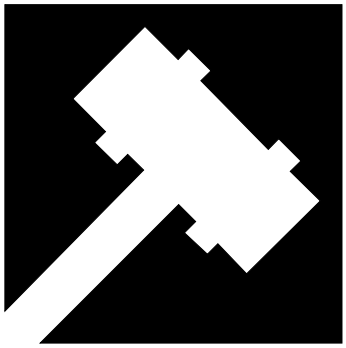
court, claiming that separating the child from his siblings was not in his best interest, and that the child received ineffective assistance of counsel because the attorney represented all of the children.

The Court of Appeal affirmed the decision of the juvenile court, declaring that the mother did not have standing to appeal either issue. Generally, parents may appeal decisions or orders in juvenile dependency cases. However, a parent cannot raise an issue on appeal unless his or her own rights are affected. Because the interests of siblings or other relatives are separate from the parent's interests, the parent does not have standing to raise an issue concerning the child's right to visit his or her siblings. In this case, the mother appealed the juvenile court's decision to place the child in another state, as this move would affect the relationship with his siblings and grandmother. Because these concerns did not affect the mother's interest, she had no standing to raise the issue on appeal.

The mother also contended that the child received ineffective assistance of counsel because the attorney represented all three children. However, because the mother failed to show how this conflict of interest affected her personally, she did not have standing to raise this issue. Even though the mother's interest in keeping the children together was the same as that of the child's siblings, she could not appeal the decision on their behalf. Therefore, the juvenile court's judgment was affirmed.



***In re Cliffton B.* (2000) 81 Cal.App.4th 415 [96 Cal.Rptr.2d 778]. Court of Appeal, Fourth District, Division 3.**

The juvenile court terminated the parental rights of a father. Both the mother and father had a history of drug and alcohol abuse and of neglecting their two sons. The boys were initially placed together in a children's home but then were later placed in separate foster homes. An effort to return the younger son to his father had failed. The father filed a Welfare and Institutions Code section 388 petition for modification to regain custody of his sons or to receive additional reunification services. The father was employed full-time, owned his home, was attending drug testing and counseling, and was visiting his older son unmonitored. The juvenile court determined that the father had not met the burden of showing changed circumstances and denied the section 388 petition. The father appealed the decision, claiming that the juvenile court erred in denying the section 388 petition and terminating parental rights. The father also joined both sons in claiming that the juvenile court erred in permitting both sons to be represented by the same attorney, and argued that the juvenile court should have made orders maintaining their relationship.

The Court of Appeal affirmed the decision of the juvenile court terminating parental rights and reversed the sibling visitation order. The juvenile court correctly denied the section 388 petition. The appellate court will not reverse a juvenile court's determination unless an abuse of discretion has been or can be shown. The father in this case failed to show an abuse of discretion. The father had relapsed and returned to illegal drug use. The father argued that the juvenile court should not have terminated his parental rights because he had regularly visited his son and his son would benefit from a continued relationship. (Welf. & Inst. Code, § 366.26 (c)(1)(A).) The younger son had adjusted well to his foster family, and they were willing to adopt him. The juvenile court balanced the benefit of adoption against the risk of returning the child to his father. There was substantial evidence supporting the juvenile court's decision to terminate the father's parental rights, and the appellate court affirmed this decision.

The appeal of the father and his two sons claimed that the juvenile court had failed to consider a sibling plan when it terminated the father's parental rights. The appellate court concluded that the father did not have standing to appeal the sibling visitation orders with his sons. Welfare and Institutions Code section 16002 expresses the Legislature's intent to preserve and strengthen family ties by placing siblings together in foster care. When it is not possible to keep a sibling group together, diligent efforts should be made to provide frequent interaction between siblings and a case plan should be prepared. (Welf. & Inst. Code, § 16002(b).) The appellate court noted that sibling visitation issues should not be considered at the section 366.26 hearing, but rather after the permanent plan is selected. In this case the juvenile court did fulfill its implied duty to consider sibling visitation when adopting the social service agency's recommendation of a few hours per month. The appellate court stated that the post-termination contact between the two boys would probably have been different had separate counsel represented them. The children were provided ineffective assistance of counsel because their joint representation by one attorney constituted a conflict of interest. The appellate court determined that the juvenile court erred

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in failing to appoint independent counsel for each brother. The sibling visitation order was remanded to the juvenile court for a new hearing concerning post-termination sibling contact.

***In re James Q.* (2000) 81 Cal.App.4th 255 [96 Cal.Rptr.2d 595]. Court of Appeal, Third District.**

The juvenile court denied a mother's request for a contested hearing and terminated her reunification services. The mother of two children suffered from mental illness and substance abuse problems that rendered her incapable of providing for her children. The children were declared dependent and the Department of Health and Human Services (DHHS) was to provide the mother with reunification services. The mother's participation in reunification services was inconsistent with the DHHS recommendation for termination of services at the review hearing under Welfare and Institutions Code section 366.21(e). The mother's counsel requested a contested hearing for an extended period of reunification services. The mother had been drug tested regularly, had completed parenting classes, currently had a residence, and no longer needed psychotropic medications. The mother argued that a contested hearing was necessary for her to testify about her contact with her children. The juvenile court denied her request for a contested six-month review hearing. The mother appealed, claiming that the juvenile court deprived her of due process by not permitting her to testify regarding contacts with her children.

The Court of Appeal reversed the decision of the juvenile court and remanded for further proceedings. In interpreting section 366.21(e), the Court of Appeal addressed an unresolved issue in the case of *In re Ingrid E.* (1999) 75 Cal. App.4th 751 [89 Cal.Rptr.2d 407]. Section 366.21(e) makes clear that the six-month review hearing is critical for a parent and that the juvenile court may terminate reunification services. Although the court has broad discretion in the adjudicative process at review hearings, that discretion must recognize the parent's right to present evidence and assert his or her interests. (*Id.* at p. 759.) Parents' liberty interests in their relationship with their children is a fundamental right, thereby affording parents due process. Review hearings provide a significant safeguard for parents in the dependency system to be given an opportunity to be heard and cross-examine and confront witnesses. Section 366.21(e), as interpreted by the appellate court, must permit the parent to present his or her case on his or her behalf.

The question for the appellate court was to determine whether a juvenile court must require an offer of proof before a party may obtain a contested review hearing. The juvenile court may make any evidentiary requests of a party at the contested hearing. The juvenile court may not, however, require a party to tender an offer of proof as a condition to obtaining a contested review hearing. Due process requires the juvenile court to permit a parent to avail him- or herself of the right to a contested review hearing without demanding an offer of proof. In this case, the parent was denied a contested review hearing to challenge the termination of reunification services. The hearing should have been conducted, affording the mother the right to be heard, present evidence, cross-examine adverse witnesses, and make any arguments on her behalf. The juvenile court's decision to deny a contested hearing was a miscarriage of justice, and the appellate court reversed the judgment.

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Editor's Note

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What challenges are your courts facing? Do you have a new, innovative program you would like to profile? Do you have questions about our programs or services? Do you need court-related information?

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We invite your queries, comments, articles, and news. Direct correspondence to Shelly Danridge, Editor, at the address below.

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In re Savannah B. **(2000) 81 Cal.App.4th 158 [96 Cal.Rptr.2d 428]. Court of Appeal, Second District, Division 4.**

The juvenile court required a child to be removed from the custody of her mother and simultaneously granted a 60-day visit between mother and daughter. The child had been placed with her maternal aunt because of her mother's use of cocaine. By the time of the disposition hearing, the mother had enrolled in a rehabilitation program, completed parenting classes, visited with her child, and tested negative for drugs. The Department of Children and Family Services (DCFS) requested findings determining whether the child would be in substantial harm if she were placed in her mother's care and recommended that she be placed with her mother for a 60-day visit. Following an instant petition for a writ of mandate challenging the lawfulness of the dispositional order, the appellate court issued an order to show cause and temporary stay order. The juvenile court vacated its order and placed the child with her mother. The issue became moot, but the appellate court did not permit the mother to withdraw her writ petition in order for it to discuss this important issue, which, according to the appellate court, "is likely to recur."

Because the juvenile court had already set aside its order, the appellate court dismissed the petition, and the order to show cause and temporary stay were dissolved. Once a child has been adjudged a dependent, the court may limit the control to be exercised by the parent. (Welf. & Inst. Code, § 361(a).) Rule 1456(a) of the California Rules of Court specifies the options that the court has at the dispositional stage of the dependency process. The appellate court determined that the juvenile court's order, removing the child from the mother's custody because of emotional damage and also granting a 60-day visit with the child, was inconsistent. Relying on *In re Damonte A.* (1997) 57 Cal.App.4th 894 [67 Cal.Rptr.2d 369] and *In re Andres G.* (1998) 64 Cal.App.4th 476 [75 Cal.Rptr.2d 285], the appellate court decided that to remove custody from a parent and simultaneously allow a lengthy visit or immediately return the child home was not authorized by the Welfare and Institutions Code and was outside the juvenile court's jurisdiction. The appellate court encouraged the courts and DCFS to implement procedures to protect children under the jurisdiction of the court and comply with the applicable statutes and rules of court.

In re Emily R. **(2000) 80 Cal.App.4th 1344 [96 Cal. Rptr.2d 285]. Court of Appeal, Fifth District.**

The juvenile court denied a teenage father's Welfare and Institutions Code section 388 petition, motion to set aside the dispositional findings, and Welfare and Institutions Code section 390 dismissal petition. The mother had notified the 15-year-old that he was the biological father of the child. When the one-month-old child was found left alone without supervision, the Department of Human Services (DHS) placed her in protective custody and later filed a juvenile dependency petition. The mother was incarcerated and the teenage biological father was not named on the petition. Months later, a social study filed with the court indicated that the teenager was the actual father of the child. The social worker attempted to reach the father at his last known address by telephone. The father did not attend the upcoming hearings even though DHS had sent notice by certified mail to his two last known addresses. The section 366.26 hearing was continued so that the father could be notified by publication in a newspaper of general circulation. While the hearing was continued for a few months, the father met the mother and learned that he was the child's father. He indicated that he had not received any of the prior notices and later began attending the hearings concerning his child and was appointed counsel. The father claimed on appeal that the court erred both in denying his motion to set aside dispositional findings because of lack of notice and in failing to appoint him a guardian ad litem.

The Court of Appeal affirmed the juvenile court's decisions. The appellate court rejected the father's argument that he was denied due process because he had no actual notice of the proceedings concerning his child. Because an alleged father in dependency proceedings does not have a known current interest (such as that of a trust beneficiary in a probate matter) when paternity has not been established, notification by publication is sufficient to satisfy due process. (But see *Mullane v. Central Hanover Trust Co.* (1950) 339 U.S. 306.) Also, the father in this case failed to establish that his address was reasonably ascertainable as required for actual notice. Actual notice does not require actual knowledge or receipt, and notice by mail reasonably calculated to provide actual notice is sufficient. In this case, DHS's efforts to notify the father of the proceedings through telephone contact with either the father or his parents (the father asserts that he did not receive any messages from his parents), sending notices to the father's last-known addresses, and providing notice by publication did not violate the father's due process rights. The juvenile court did not err by denying the father's motions. ■

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Update
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New Education, Experience, and Training Standards

FOR COURT-APPOINTED CHILD CUSTODY EVALUATORS

Senate Bill 433 [Johnson]; Stats. 1999, ch. 761 requires the Judicial Council to develop a rule of court "that establishes education, experience, and training requirements for all child custody evaluators." The bill also requires that, on or after January 1, 2005, all child custody evaluators must be licensed as a

1. Board-certified psychiatrist;
2. Psychologist;
3. Marriage and family therapist;
4. Clinical social worker; or
5. Court-connected evaluator who has been certified by the court as meeting all qualifications to perform court-connected evaluations.*

In response to this legislative mandate, the Center for Families, Children & the Courts (CFCC) and the Judicial Council's Family and Juvenile Law Advisory Committee have launched several efforts to ensure that professionals from a variety of disciplines, both inside and outside the courts, can meet to consider what the draft rule should accomplish and what it should include.

Beginning in August 1998, CFCC has hosted four invitational caucus meetings designed to facilitate dialogue among the professional associations, licensing boards, and court-connected and private practice professionals most likely to be affected by the rule of court. This group included representatives from the Family Law Subcommittee of the Family and Juvenile Law Advisory Committee, California's professional behavioral science organizations, and licensing boards, family law bench officers, family law attorneys, family court services directors, private child custody evaluators, lobbyists, and several state legislators (including members of the Senate Judiciary Committee).

This fall the Center for Families, Children & the Courts has also been conducting focus group meetings of 40 to 60 interested persons, organizations, and professionals in five different regions of the state. In the coming months, a task force of experts will participate in drafting the proposed rule for review first by the Family Law Subcommittee of the Family and Juvenile Law Advisory Committee, then by the Rules and Projects Committee of the Judicial Council, and finally, by the full Judicial Council.

The Judicial Council will be inviting written comments from the public on proposed education, experience, and training standards during the Summer 2001 invitation-to-comment period. All proposals will be posted on the California Courts Web site at *www.courtinfo.ca.gov/invitationstocomment.*

The Center for Families, Children & the Courts wishes to thank the following individuals for their support and assistance with the regional focus group meetings:

- Claudia George and Bunny Moore, Sacramento County
- Timothy Van Schooten and Jeannie Sweat, Shasta County
- John Schiller, San Francisco County
- Hon. Donna Hitchens, Judge of the Superior Court of California, County of San Francisco
- Jan Shaw, Orange County
- Margaret Little, Los Angeles County
- Patti Chavez-Fallon, San Diego County
- Pat Foster, Tulare County
- Lou Dawson, Fresno County

For additional information about development of the proposed education, experience, and training standards, please contact Mimi Lyster or Shelly Danridge at 415-865-7741. ■

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* Fam. Code, § 3110.5(c).

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- ✦ Coordinating and Unifying Family and Juvenile Courts
- ✦ Juvenile Domestic Violence Courts
- ✦ Batterer's Intervention Programs in Dependency and Delinquency
- ✦ New Rules, Forms, and Statutes
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- ✦ "Who, What, Where, When, Why, and How? Getting More Accurate Answers to These Questions From Children
- ✦ Court Appointed Special Advocates' Infants and Toddlers Program
- ✦ Handling Domestic Violence in Juvenile Dependency Cases: Implementing the "Green Book"
- ✦ Chemical Dependency: Engaging a Client in a Participatory and Accountable Service Plan
- ✦ Special Education in Juvenile Dependency and Delinquency Cases

EDUCATIONAL CREDITS: Mandatory Continuing Legal Education Credit (MCLE) as well as Board of Behavioral Sciences Credit (BBS) will be offered at the conference.

RECEPTION WITH THE CHIEF JUSTICE: Attendees will have an opportunity to join Chief Justice Ronald M. George along with other members of the Judicial Council at this informal reception to discuss important issues.

NEW THIS YEAR! SPECIAL PRECONFERENCE SYMPOSIUM (OPTIONAL EVENT): This training looks at expert testimony in court from both the attorney side and the witness side. Attorneys and social workers/mental health professionals will learn skills in separate tracks taught by an outstanding faculty. At the end of the day, the participants will see a trial demonstration and be able to ask questions and discuss issues with faculty and one another. The featured luncheon speaker (luncheon included for all symposium attendees) is Hon. Donna J. Hitchens, presiding judge of the San Francisco Unified Family Court and member of the Judicial Council.

We look forward to seeing you at the conference!
Please call 415-865-7739 for more information, or e-mail Christopher Wu at christopher.wu@jud.ca.gov.

SPACE FOR THE PRECONFERENCE SYMPOSIUM IS EXTREMELY LIMITED. PLEASE REGISTER EARLY!